

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY TRAN,
et al.,

Plaintiffs,

CIVIL ACTION NO. 06-CV-13572-DT

vs.

DISTRICT JUDGE BERNARD A. FRIEDMAN

MICHIGAN DEP'T OF
HUMAN SERVICES, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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REPORT AND RECOMMENDATION

I. **RECOMMENDATION:** This Court recommends that Defendants Anne-Marie Romanik-Patenaude, M.D., Manisha R. Parikh, M.D., and David S. Segaloff, M.D.'s Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) and/or Motion for Summary Judgment Under Fed. R. Civ. P. 56 (Docket no. 138) be **DENIED** as **MOOT**.

II. **FACTS AND ANALYSIS**

This matter comes before the Court on Defendants' Motion to Dismiss or for Summary Judgment filed on January 22, 2007. (Docket no. 138). The matter was referred to the undersigned on January 26, 2007. (Docket no. 139). Plaintiffs have not responded to the motion. Nevertheless, because the motion is moot the Court will proceed to address it pursuant to 28 U.S.C. § 636(b)(1)(B).

On October 24, 2006 this Court considered the dispositive motions filed by many Defendants in this action. (Docket no. 115). These three Defendants had not at that time filed their motion to dismiss or for summary judgment. Nevertheless, this Court as part of that Report recommended that the claims against all remaining Defendants be dismissed. (*Id.* at 2). On December 19, 2006 Chief Judge Friedman overruled Plaintiffs' objections and adopted this Court's Report and Recommendation in full.

(Docket no. 137). Accordingly, the claims against these three Defendants were dismissed at the time they filed this motion. The Defendants' motion to dismiss or for summary judgment is therefore moot and should be denied on that basis.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: January 30, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Beverly Tran and Counsel of Record on this date.

Dated: January 30, 2007

s/ Lisa C. Bartlett
Courtroom Deputy